

AN ACT Relating to implementing Washington's participation in a regional cap-and-trade program for reducing greenhouse gas emissions; amending RCW 70.94.151; amending RCW 70.235.005 and RCW 70.235.010; and creating new sections in RCW 70.235.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 70.235.005 and 2008 c 14 § 1 are each amended to read as follows:

(1) The legislature finds that Washington has long been a national and international leader on energy conservation and environmental stewardship, including air quality protection, renewable energy development and generation, emission standards for fossil-fuel based energy generation, energy efficiency programs, natural resource conservation, vehicle emission standards, and the use of biofuels. Washington is also unique among most states in that in addition to its commitment to reduce emissions of greenhouse gases, it has established goals to grow clean energy jobs and reduce the state's expenditures on imported fuels.

~~((2) The legislature further finds that Washington should continue its leadership on climate change policy by creating accountability for achieving the emission reductions established in RCW 70.235.020, participating in the design of a regional multisector market based system to help achieve those emissions reductions, assisting other market strategies to reduce emissions of greenhouse gases, and ensuring the state has a well trained workforce for our clean energy future.))~~

~~((3))~~(2) It is the intent of the legislature that the state will: (a) Limit and reduce emissions of greenhouse gases consistent with the emission reductions established in RCW 70.235.020; (b) minimize the potential to export pollution, jobs, and economic opportunities; and (c) reduce emissions at the lowest cost to Washington's economy, citizens, and businesses.

~~((4))~~(3) ~~((In the event the state elects to participate in a regional multisector market based system, it is the intent of the legislature that the system will become effective by January 1, 2012, after authority is provided to the department for its implementation.))~~The legislature finds that ((B)) acting now provides Washington businesses with predictability, drives investment in the new clean energy economy, creates jobs, positions Washington businesses to receive credit for early reductions of greenhouse gases, and will protect Washington citizens' interests in the development of any federal cap-and-trade program. By acting now, Washington businesses and citizens will have adequate time and opportunities to be well positioned to take advantage of the low-carbon economy by developing a well trained work force and making necessary investments in low-carbon technology.

(4) The legislature finds that in order to meet the job creation goals established in this section and the greenhouse gas emission reductions established in RCW 70.235.020, a firm limit on greenhouse gas emissions is necessary. It is therefore the intent of the legislature that Washington participate in the regional cap-and-trade program. The legislature also recognizes the importance of linking to or participating in a federal cap-and-trade program, should one be implemented.

(5) It is also the intent of the legislature that the federal cap-and-trade program recognize Washington's unique emissions portfolio, including the state's hydroelectric system, the opportunities presented by Washington's abundant forest resources and agriculture land, ~~((and))~~ the state's leadership in energy efficiency and the actions it has already taken that have reduced its generation of greenhouse gas emissions, and that entities receive appropriate credit for early actions to reduce greenhouse gases.

(6) Any revenues that accrue to the state by ~~((a market system))~~ the regional cap-and-trade program must be used to further the state's efforts to achieve the emission reduction requirements goals established in RCW 70.235.020, address the impacts of global warming on affected habitats, species, and communities, and increase investment in the clean energy economy in a way that ensures the new, clean energy economy is one with widely-shared prosperity, particularly for communities and workers that have been disproportionately affected by economic downturns. ~~((suffered from heavy job losses and chronic unemployment and underemployment.))~~

(7) The legislature finds that a well-functioning market is the least-cost path to achieving the state's statutory greenhouse gas reductions and that the market must be designed to prevent manipulation and avoid excessive speculation.

Sec. 2. RCW 70.235.010 and 2008 c 14 §2 are each amended to read as follows:

(1) "Allowance" means a limited authorization, issued by a jurisdiction participating in the regional cap-and-trade program or otherwise recognized by the department as having as rigorous a greenhouse gas cap-and-trade program, to emit up to one metric ton of a greenhouse gas as measured in carbon dioxide equivalents. An "allowance" is not a property right.

(2) "Allowance cap" means Washington's share of allowances from the total number of allowances available to the jurisdictions participating in the regional cap-and-trade program.

(3) "Banking" means the carry over of unused allowances or offsets from one compliance period to another.

(4) "Borrowing" means using allowances from a future compliance period to meet a current compliance obligation.

(5) "Capped region" means jurisdictions including Washington that are participating in the regional cap-and-trade program, and jurisdictions in other governmentally-approved cap-and-trade programs that link to the regional cap-and-trade program.

~~((4))~~(6) "Carbon dioxide equivalents" means a measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

~~((2))~~(7) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

~~((3))~~(8) “Climate impacts group” means the University of Washington’s climate impacts group.

(9) “Compliance obligation” means the requirement to turn in to the department the number of allowances or offset credits equal to the person’s covered emissions during the compliance period.

(10) “Compliance period” means the time period during which emissions subject to the compliance obligation are covered under the program.

(11) “Covered emissions” means direct emissions except for transportation fuels, covered emissions means emissions from the combustion of transportation fuel that is sold in Washington for use in Washington; and for electricity imported into Washington, covered emissions are emissions associated with the out-of-state production of electricity that is sold or furnished to end use customers in Washington.

~~((4))~~(11) “Department” means the department of ecology.

~~((5))~~(12) “Direct emissions” means emissions of greenhouse gases from sources of emissions including, stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.

~~((6))~~(13) “Director” means the director of the department.

(14) “Early reduction allowance” means an allowance for reductions in greenhouse gas emissions that occur after January 1, 2008 and before January 1, 2012 and that are approved by the department.

(15) “Electric utility” includes any person who sells or furnishes electricity to end use customers in this state. “Electric utility” does not include a person who sells electricity exclusively to other persons who resell the electricity to end use customers in this state, or a person who sells electricity exclusively to industrial customers under a contract.

(16) “Emission threshold” means the greenhouse gas emission level at or above which a particular entity or facility has a compliance obligation.

~~((7))~~(17) “Greenhouse gas” and “greenhouse gases” includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(18) “Historical emissions” means the annual covered emissions of greenhouse gases averaged over the time period January 1, 2007 through December 31, 2009.

~~((8))~~(19) “Indirect emissions” means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.

(20) “Offset project” means a project that reduces or removes greenhouse gases that meets the criteria established by the department and where the greenhouse gases would not otherwise be subject to coverage under the program.

(21) “Offset credit” means a credit that verifies and confirms the reduction or removal of greenhouse gases by an offset project that can be used to meet a compliance obligation.

~~((9))~~(22) “Person or persons” means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(23) “Point of regulation” means the person with the compliance.

~~((40))~~(24) “Program” means the regional cap-and-trade program developed and implemented under this chapter~~((-department’s climate change program))~~.

(25) “Regional cap-and-trade program” means the cap-and-trade program designed by the western climate initiative.

(26) “Retire” means to invalidate an allowance or offset credit such that the allowance or offset credit may never be sold or otherwise used again.

~~((44))~~(27) “Total emissions of greenhouse gases” means all direct and all indirect emissions.

(28) “Transportation fuel” means any carbon based, combustible gas or liquid used for the propulsion of equipment and vehicles.

~~((42))~~(29) “Western climate initiative” means the collaboration of states and Canadian provinces to design a regional cap-and-trade program as directed under the western regional climate action initiative signed by the governor on February 22, 2007.

NEW SECTION. Sec. 3. Regional Cap-and-Trade Program. The department is authorized to meet the state’s emission reductions established in RCW 70.235.020 through the creation of an allowance trading program for covered emissions of greenhouse gases with allowances that are fungible and tradable regionally, nationally or internationally. The department shall not implement a cap-and-trade program that covers only Washington state.

NEW SECTION. Sec. 4. Annual Allowance Caps

(1) The program shall include annual allowance caps that together with other complementary policies will ensure that Washington will meet the emission reduction requirements in RCW 70.235.020.

(2) The allowance caps for each year from 2012 to 2020 will be set in advance of the program start in 2012. Allowance caps for each year after 2020 will be set not less than three years in advance of the start of the next compliance period.

(3) The allowance caps shall decline each year until Washington's greenhouse gas emissions are reduced as required by RCW 70.235.020.

(4) The allowance cap for 2012 will be set based on the department's best estimate of the expected actual emissions covered by the program in that year as adjusted by the reallocation provided for in subsection (7).

(5) The allowance cap for 2015 will be increased by the department's best estimate of expected new emissions to be included in the program in that year, after the annual reduction is made to the cap.

(6) The allowance caps shall not take into account the early reduction allowances in Section 4, subsection (5)(b).

(7) Washington shall contribute 1% of its 2012 allowance cap into a pool. Washington's contribution together with the 1% contributions of the other jurisdictions participating in the regional cap and trade program will be reallocated among the participating jurisdictions based on a formula that shall take into account the following factors:

(a) production and consumption of electricity megawatt hours within each jurisdiction participating in the regional cap-and-trade program;

(b) population growth within the jurisdictions participating in the regional cap-and-trade program; and

(c) Washington's share of the total covered emissions from 2001 through 2005 from jurisdictions participating in the regional cap-and-trade program.

(8) The allowance cap may also be adjusted as necessary to account for expansion of the capped region through linkage to other governmentally approved cap-and-trade programs, changes in coverage under the regional cap-and-trade program, or discovery of incorrect or inaccurate data used to determine the allowance cap.

NEW SECTION. Sec. 5. Issuing and Retiring Allowances

(1) The department shall issue allowances that can be used to meet a compliance obligation under this chapter. Except for early reduction allowances, the number of allowances issued by the department may not exceed the allowance cap for any given year or compliance period. The department may retire allowances if it determines that its allowance cap exceeds the state's emissions that are covered by the program. The rules adopted by the department shall include the process, including the data that will be used, by which this determination will be made.

(2) Upon receipt by the department of an allowance to meet a compliance obligation, the department shall retire the allowance.

- (3) The department shall ensure that all allowances that it issues are tracked so that the department knows who holds a given allowance and when it is retired.
- (4) The department shall identify allowances it issues that are based upon emissions from electricity generation within the state and separately identify allowances issued for emissions from electricity generation located outside the state.
- (5) The department may accept any allowance to satisfy a compliance obligation as long as the allowances that are issued by a jurisdiction other than the state meet criteria established by the department in rule. However, the total number of allowances accepted from jurisdictions other than those participating in the regional cap-and-trade program may be limited as set forth by the department in rule.
- (6) The department shall also include in rules implementing the program:
 - (a) A schedule for distributing Washington's allowances;
 - (b) Criteria that are consistent with the regional cap-and-trade program for qualifying for an early reduction allowance;
 - (c) A process for allowances to be banked, which may include limitations on the number of allowances any one party may hold or control; and
 - (d) Prohibitions on borrowing allowances.

NEW SECTION. Sec. 6. Distribution of Allowances

- (1) The department shall distribute Washington's allowance cap as follows:
 - (a) For the compliance period 2012 through 2014:
 - (i) A total of ten percent of the state's allowance cap for the compliance period shall be periodically sold at regionally conducted auctions subject to legislative approval required in Section 8;
 - (ii) All electric utilities that are covered by the program shall periodically receive allowances free of charge throughout the compliance period based on historical emissions after the annual reduction is made to the cap. If a utility sells any allowances it receives free of charge, all proceeds from such sales must be used
 - (A) to reduce the energy costs borne by the utility's customers with incomes within 250% of the federal poverty level;
 - (B) for investments in energy efficiencies for its customers;
 - (C) to develop or otherwise ensure the supply of renewable energy; or

(D) for investments in energy efficiencies at the utility.

(iii) Except for allowances that may be set aside as described in subsections (5) of this section and except for subsection 6 of this section, the balance of the state's allowance cap shall be periodically distributed to persons with a compliance obligation free of charge throughout the compliance period based on historical emissions. However, for persons whose coverage under the program begins between January 1, 2010 and December 31, 2011, allowances shall be distributed based upon the department's best estimate of the person's annualized covered emissions. The department shall by rule establish how to determine the annualized covered emissions and shall use data reported to the department under Section 19 to the maximum extent possible. Persons submitting additional data may seek to demonstrate that it is exempt from public disclosure under chapter 42.56 RCW or chapter 70.94 RCW.

(iv) The department shall by rule develop a formula for allocating the allowances under subsection (iii).

(v) In 2012, the department shall make a one-time distribution of allowances to each electric utility that sells or furnishes electricity to end use customers in this state, including electric utilities whose emissions are not covered by the program, based on its production and consumption of electricity megawatt hours. The allowances for this distribution shall come from the adjustment to the state's 2012 allowance cap provided for in Section 3(7) provided the state receives additional allowances as a result of the adjustment. The department shall develop a formula to distribute these allowances to each electric utility.

(b) For the compliance periods ending in 2017 and 2020:

(i) Ten percent of the state's total allowance cap for the compliance period plus all allowances associated with the inclusion of transportation fuels into the program in 2015 shall be periodically sold at regionally conducted auctions subject to the legislative approval required in Section 8;

(ii) All electric utilities that are covered by the program shall receive allowances free of charge based on historical emissions, after the annual reduction is made to the cap. If a utility sells any allowances it receives free of charge, all proceeds from such sales must be used

A) to reduce the energy costs borne by the utility's customers with incomes within 250% of the federal poverty level;

(B) for investments in energy efficiencies for its customers;

(C) to develop or otherwise ensure the supply of renewable energy; or

(D) for investments in energy efficiencies at the utility.

(iii) Except for allowances that may be set aside as described in subsections (5) of this section, and except as provided in subsection 6 of this section, the balance of the state's allowance cap shall be distributed to persons with a compliance obligation, free of charge based on historical emissions except that for emissions associated with the inclusion of residential, commercial and industrial fuels that are first brought into the program in 2015, distribution shall be based on the average emissions associated with the combustion of fuel sold during the previous five years.

(iv) The department shall by rule develop a formula for allocating the allowances under subsection (iii).

(3) The department shall by rule establish how to determine the historical emissions for persons covered by the program, including to the extent practicable independent verification of data needed to make this determination. Persons submitting data may seek to demonstrate that the data is exempt from public disclosure under chapter 42.56 RCW or chapter 70.94 RCW.

(3) Proceeds from the sale of free allowances by investor-owned utilities are subject to review by the Washington Utilities and Transportation Commission to ensure compliance with this section. Proceeds from the sale of free allowances by non-investor owned electric utilities are subject to review by the Office of the State Auditor to ensure compliance with this section.

(4) Notwithstanding Section 8, and except for the allowances that may be set aside as provided in subsection (5), for the years after 2020, the department shall auction all of the state's allowances. The auction procedures must be consistent with the auction procedures used in the regional cap-and-trade program. If the state is participating in a federal cap-and-trade program, the department shall auction the state's allowances to the extent authorized by the federal program and shall use auction procedures that are consistent with the federal program.

(5) The department may set aside no more than 10 percent of allowances from Washington's allowance cap for the following purposes that shall be specified in the rule

(a) to cover such things as new entrants doing business in Washington or increases in emissions associated with electricity generation where the department determines there has been a low water period; or

(b) to persons who have made reductions to greenhouse gas emissions covered by the program that do not qualify for early reduction allowances.

(6) Any person who was not in operation six months immediately prior to the distribution of allowances shall not qualify to receive allowances, other than those distributed by auction.

NEW SECTION. Sec. 7. Program Coverage

(1) In 2012, consistent with the regional cap and trade program the program shall cover emissions that meet or exceed 25,000 metric tons of carbon dioxide equivalents annually from:

(a) electricity that is generated or consumed within the state;

(b) combustion at industrial and commercial facilities; and

(c) industrial processes.

(2) In addition to the emissions covered in subsection (1), in 2015, the program shall cover emissions that meet or exceed 25,000 metric tons of carbon dioxide equivalents annually from:

(a) transportation fuel combustion within the state;

(b) residential fuel combustion within the state; and

(c) fuel delivered or sold for industrial and commercial combustion within the state where the fuel is used by persons not otherwise covered by the program in 2012.

(3) Except for purposes of reporting, the following carbon dioxide emissions are not covered by the program:

(a) emissions from industrial combustion of biomass in the form of fuel wood, wood waste, wood byproducts, and wood residuals as long as the region's silvicultural sequestration capacity is maintained or increased; and

(b) emissions from the combustion of biofuels or the biofuel component of blended fuels as that term is defined in RCW 43.325.010(4).

(4) By rule, the department:

(a) Shall determine the person who has the compliance obligation for covered emissions. For emissions associated with the combustion of fuels that are included in the program for the first time in 2015, the department shall establish the point of compliance as close as possible to the point where the fuel enters the Washington economy.

(b) May expand the program to include emissions below the 25,000 metric ton threshold or beyond the scope identified within subsections (1) and (2), as necessary to ensure that the emissions covered by the program are consistent with the regional cap-and-trade program;

(c) Shall include measures so that persons do not inappropriately avoid the emissions threshold for coverage;

(5) With respect to energy facilities covered under RCW 80.50 and notwithstanding RCW 80.50.120, this act applies to all energy facilities as that term is defined in RCW 80.50.020. Nothing in this chapter shall be construed as conflicting with ch. 80.50 RCW.

NEW SECTION. Sec 8. Ensuring a Functional and Efficient Market

(1) The department shall consult with other jurisdictions in the western climate initiative, Washington state agencies with expertise on markets, and other states and federal agencies that have designed or implemented a market for regulating air pollutants to design a trading market that includes provisions to prevent market manipulation and ensure a functional and efficient market. The design provisions shall include:

- (a) requiring or conducting audits, investigations and surveillance of the market;
- (b) actions to prohibit conflicts of interest between emitters, verifiers, monitors, auditors, investigators or surveillance persons;
- (c) establishment of measures to address market emergencies;
- (d) prevention of fraud to the greatest extent possible;
- (e) prevention of speculators from unfairly affecting the price of allowances in the program to the greatest extent possible;
- (f) issuance of orders, and penalties established by rule, sufficient to address market manipulation;
- (g) other conditions or provisions necessary to prevent market manipulation.

(2) Ecology shall refer the most egregious violations to the Attorney General or the county prosecutor for consideration for criminal prosecution; and

(3) The department shall provide a report to the legislature by December 31, 2010 on the design of the market that includes an explanation of how manipulation and excessive speculation will be avoided.

NEW SECTION. Sec. 9. Auctions

(1) The department shall develop a design for the auctioning of the state's allowances, including the establishment of a minimum or reserve bid price to facilitate price discovery. In developing the design, the department shall consult with other jurisdictions in the western climate initiative and other states and federal agencies that have been engaged in auctioning of allowances to regulate air pollutants. By December 31, 2010, the department shall submit the design to the legislature for approval. The submittal must include proposed legislation necessary to implement the design. An estimate of the cost to conduct the auctions and the expected revenues shall also be included.

(2) The auction design shall be consistent with the regional cap-and-trade program and shall include the following:

- (a) elements that minimize allowance price volatility, guard against bidder collusion, and minimize the potential for market manipulation;

- (b) provisions to ensure that bidders are financially able to purchase allowances if they are the successful bidder;
- (c) provisions to limit the number of allowances any one party may purchase as necessary to help ensure that available allowances go to persons with a compliance obligation; and
- (d) a flexible process that allows for ongoing modification of the auction design and procedures in response to allowance market conditions and allowance market monitoring data, provided that the process allows for public review and comment.

NEW SECTION. Sec. 10. Offsets

- (1) The department shall by rule set criteria for issuing and accepting offset credits for offset projects to meet a person's compliance obligation and shall include a limitation on their use that is consistent with the limitation established by the regional cap-and-trade program. In developing the criteria for offset projects, priority shall be given to investigating and developing criteria for offset projects within the forestry, agricultural, and waste management sectors.
- (2) The department may issue offset credits for offset projects located in Washington. The department may also issue offset credits for offset projects that are located in any jurisdiction in the United States, Mexico and Canada that is outside the capped region. One offset credit shall be issued for up to each metric ton of emissions as measured in carbon dioxide equivalent associated with an offset project.
- (3) Except as provided in this section, the department may accept offset credits for compliance purposes from other jurisdictions in the capped region as well as "Annex 1" countries from the U.N. Framework Convention on Climate Change. The department shall not accept offset credits for an offset project that reduces, removes or avoids emissions that, had they occurred within the capped region, would have been covered by the program.
- (4) The department may also accept for compliance purposes offset credits from developing countries in accordance with the Clean Development Mechanism of the Kyoto protocol or if the Clean Development Mechanism is replaced, a protocol developed by the department. The department may develop criteria for such offset projects to ensure similar rigor to offset projects within the state.
- (5) Any offset credit that is used to meet a compliance obligation must conform to the rules adopted by the department, which shall be consistent with the regional cap-and-trade program.
- (6) Upon receipt by the department of an offset credit to meet a compliance obligation, the department shall retire the offset credit.
- (7) The department shall ensure that all offset credits that it issues are tracked to ensure that the department knows who holds a given offset credit and when it is retired.

NEW SECTION. Sec. 11. Compliance and Enforcement

(1) Persons with emissions covered under section 7 who have a compliance obligation shall submit to the department allowances, offset credits, or a combination thereof equal to their total covered emissions of greenhouse gases during the compliance period.

(2) Compliance periods shall be a maximum of three years in length. The department shall by rule establish the date by which all allowances and offset credits must be turned in to the agency to meet the compliance obligation, which shall be after the compliance period ends. The department may by rule allow for turning in allowances prior to the end of a compliance period.

(3) For purposes of meeting a compliance obligation, the department shall limit by rule the number of offset credits that can be submitted. The limitation on the use of offsets shall be consistent with the limitation on offsets established by the regional cap-and-trade program. The department may limit by rule the number of allowances from other jurisdictions outside of those participating in the regional cap-and-trade program, in order to ensure that a majority of emission reductions come from within those jurisdictions.

(4) If sufficient allowances are not turned in to meet the compliance obligation, a penalty of three allowances shall be submitted for every one allowance that is due. When a person covered under the program reasonably believes that it will be unable to meet a compliance obligation the person shall immediately notify the department. The department shall issue an order requiring the person to submit the penalty allowances. Failure to submit penalty allowances as required by this subsection shall result in a penalty of up to \$5,000 for each penalty allowance that is not submitted.

(5) The department may issue penalties for failure to comply, and orders to require compliance, with the provisions of this act including requiring compliance plans. Except as provided in subsection (4), any person who violates the terms of the act or an order issued under this section shall incur a penalty of up to ten thousand dollars per day per violation for each day that the person has not complied.

(6) Appeals of orders and penalties issued pursuant to this chapter shall be to the Pollution Control Hearings Board under chapter 43.21B RCW.

(7) The department may exercise its discretion to waive or issue reduced penalties based upon criteria it establishes if the department finds that the violation was inadvertent. Penalties issued under this section are not subject to the requirements of chapter 43.05 RCW.

NEW SECTION. Sec. 12. Dedicated Fund

(1) The Climate Protection Account is created in the state treasury. To the account shall be deposited any funds received through auction of allowances, penalties paid under [sec. 10] of this chapter and any other funds as the legislature directs.

(2) Funds from the account are subject to appropriation under chapter 43.88 RCW. In addition to covering reasonable administrative costs to develop, implement and enforce the program including Washington's share of any necessary and reasonable costs of the regional organization described in [section 12] of this act, the funds shall only be used for the following purposes, which are listed in priority order:

- (a) reducing price impacts for consumers with incomes within 250% of the federal poverty level;
- (b) providing for worker transition and creating green jobs, especially in and for those communities and workers that have been disproportionately affected by economic downturns;
- (c) supporting transit and transportation projects that will reduce greenhouse gas emissions;
- (d) energy efficiency and renewable energy incentives including matching electric utility sponsored programs that support customer energy efficiency investment; new renewable energy resource development, including related transmission, energy storage, and integration technologies;
- (e) promoting emission reductions and carbon sequestration in agriculture, forestry, waste management and other uncapped sectors;
- (f) efforts funded by local governments to reduce community greenhouse gas emissions except for reductions to covered emissions where the local government is the person with the compliance obligation;
- (g) recognizing early actions to reduce greenhouse gas emissions where those actions do not qualify for early reduction allowances;
- (h) adaptation to climate change impacts, including impacts on affected species, habitats and communities; and
- (i) research, development, demonstrations, and deployment of technology to reduce greenhouse gas emissions.

NEW SECTION. Sec. 13. Regional Organization

(1) The director is authorized to enter into an agreement with representatives of other jurisdictions within the capped region for the formation of an organization, including a non-profit corporation that may carry out the following administrative functions:

- (a) coordination of a regional auction of allowances;
- (b) tracking of emissions and providing of public information about progress towards the regional greenhouse gas reduction goals;
- (c) monitoring and reporting on market activity, including potential market manipulation;

(d) serving as a forum for jurisdictions within the capped region to update one another on program progress;

(e) coordination of review and adoption of protocols for offsets;

(f) coordination of review and adoption of updated reporting protocols for greenhouse gas emissions;

(g) coordination of review and issuance of offset credits; and

(h) suggesting criteria and means to accredit service providers to deliver validation and verification services.

(2) Any agreement entered into under this section must include provisions for Washington to exercise oversight of the organization, including authority to audit the organization's finances and records. The agreement must also authorize Washington to withdraw from the agreement without penalty if the organization fails to meet its obligations under the agreement.

(3) An organization formed under this section is not a state agency and shall have no regulatory or enforcement authority.

(4) Nothing in this act shall be deemed to constitute a waiver of the Washington's sovereign immunity. By entering into any agreement or arrangement authorized under this section, neither the director nor his or her designees nor Washington consents to suit outside of Washington or consents to the governance of such suit under any law other than that of Washington.

NEW SECTION. Sec. 14. Coordinated Release of Information

(1) The department shall compile and post for public information annual summaries of greenhouse gas emissions covered by the program. In order to limit price volatility and prevent manipulation of the market public posting of the summaries and underlying data may be subject to a temporary embargo by the department prior to a common posting schedule developed in coordination with other jurisdictions participating in the regional cap-and-trade program. Prior to the common posting date, the summaries and underlying data are exempt from public disclosure under chapter 42.56 RCW.

NEW SECTION. Sec. 15. Rule-making Authority

(1) The department shall adopt rules to implement the program described in this act. The rules shall include all requirements of this act and shall require that Washington's participation in the program will begin on January 1, 2012. The rules must be developed in coordination with other jurisdictions participating in the western climate initiative and be consistent with the regional cap-and-trade program.

(2) The department's rules must be adopted no later than December 31, 2010. The rules shall not go into effect until May 1, 2011.

NEW SECTION. Sec. 16. Federal cap –and-trade program.

The department may modify or repeal the rules developed under this act as necessary to link to, avoid duplication with or participate in a federal cap-and-trade program. The department may use the process for expedited rulemaking under RCW 34.05.353. Nothing in this subsection prevents Washington from participating in a federal program or from implementing a program that is more stringent than a federal program.

NEW SECTION. Sec. 17. 2008 c 14 § 4, RCW 70.235.030, shall expire May 1, 2012.

NEW SECTION. Sec. 18. Sections 3 through 16 of this act are each added to chapter 70.235 RCW.

Sec. 19. RCW 70.94.151 and 2008 c 14 §5 are each amended as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided

in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring the reporting of emissions of greenhouse gases as defined in RCW 70.235.010. The rules must include a de minimis amount of emissions below which reporting will not be required for both indirect and direct emissions. The rules must require that emissions of greenhouse gases resulting from the burning of fossil fuels be reported separately from emissions of greenhouse gases resulting from the burning of biomass.

(b) Except as provided in (g) of this subsection, the department shall, under the authority granted in subsection (1) of this section, adopt rules requiring (i) any owner or operator ~~((: (i) - O))~~ of a fleet of on-road motor vehicles that as a fleet emit at least twenty-five hundred metric tons of greenhouse gas annually in the state to report the emissions of greenhouse gases generated from

or emitted by that fleet; and (ii) any owner or operator of a source or combination of sources that emit at least ten thousand metric tons of greenhouse gas annually in the state to report their total annual emissions of greenhouse gases; (iii) the importer, seller, deliverer or distributor of fuels for use in Washington where the annual emissions in the state associated with the combustion of the fuel delivered equal or exceed ten thousand tons of greenhouse gas to report the emissions of greenhouse gases associated with the combustion of those fuels; and (iv) the importer, seller, deliverer or distributor of electricity from outside Washington for consumption in Washington to report the emissions of greenhouse gases associated with the generation of the electricity delivered into the state where the annual emissions associated with electricity equal or exceed ten thousand metric tons of greenhouse gas . Reporting required in subsections (b)(i) and (b)(ii) must begin in 2010 for emissions in 2009. Reporting required in subsections (b)(iii) and (b)(iv) must begin in 2011 for emissions in 2010. In the rule, the person or persons in subsection (5)(b)(iii) and (iv) who must report shall be consistent with the person with the compliance obligation under the cap-and-trade program established under [Section 7]. The rules shall also require that emissions from electricity generation within the state be reported separately from emissions from electricity generation located outside the state.

(c) In calculating emissions of greenhouse gases for purposes of determining whether or not reporting is required, only direct emissions shall be included. For purposes of reporting emissions of greenhouse gases in chapter 14, Laws of 2008, "source" means any stationary source as defined in RCW 70.94.030, or mobile source used for transportation of people or cargo. The emissions of greenhouse gases must be reported as carbon dioxide equivalents.

(d) The rules must require that persons report 2009 emissions starting in 2010. The rules must establish an annual reporting schedule that takes into account the time needed to allow the owner or operator reporting emissions of greenhouse gases to gather the information needed and to verify the emissions being reported. However, in no event may reports be submitted later than October 31st of the year in which the report is due.

(e) The department may phase in the reporting requirements for sources or combinations of sources under (b)(ii) of this subsection until the reporting threshold is met, which must be met by January 1, 2012. The department may from time to time amend the rules to include other persons that emit less than the annual greenhouse gas emissions levels set out in this subsection if necessary to comply with any federal reporting requirements for emissions of greenhouse gases.

~~((b))~~(f) In its rules, the department may defer the reporting requirement under (b) of this subsection for emissions associated with interstate and international commercial aircraft, rail, truck, or marine vessels until (i) there is a federal requirement to report these emissions; or (ii) the department finds that there is a generally accepted reporting protocol for determining interstate emissions from these sources.

~~((e))~~(g) The department shall share any reporting information reported to it with the local air authority in which the owner or operator reporting under the rules adopted by the department operates.

~~((d))~~(h) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Owners and operators required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for sources operating within the authority's jurisdiction.

~~((e))~~(i) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

~~((f))~~(j) In developing its rules, the department shall, with the assistance of the department of transportation, identify a mechanism to report an aggregate estimate of the annual emissions of greenhouse gases generated from or emitted by otherwise unreported on-road motor vehicles.

~~((g))~~(k) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in the multisector market-based system designed under RCW 70.235.020.

~~((h))~~(l) Should the federal government adopt rules sufficient to track progress toward the emissions reductions required by chapter 14, Laws of 2008 governing the reporting of greenhouse gases, the department shall amend its rules, as necessary, to seek consistency with the federal rules to ensure duplicate reporting is not required. Nothing in this section requires the department to increase the reporting threshold established in (a) of this subsection or otherwise require the department's rules be identical to the federal rules in scope.

~~((i))~~(m) The definitions in RCW 70.235.010 apply throughout this subsection (5) unless the context clearly requires otherwise. The definition of "person" in RCW 70.94.030 shall apply to this section.

(n) For violations of this subsection, in addition to other enforcement authority under this chapter, the department may issue penalties for up to \$10,000 per day per violation for each day that emissions are not reported beyond the deadline to report established in the rule..

Sec. 19. RCW 43.21B.110 is amended as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

- (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.235, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.
 - (b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.235, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.
 - (c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.
 - (d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.
 - (e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.
 - (f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.
 - (g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.
 - (h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.
- (2) The following hearings shall not be conducted by the hearings board:
- (a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.
 - (b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.
 - (c) Proceedings conducted by the department, or the department's designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.
 - (d) Hearings conducted by the department to adopt, modify, or repeal rules.
 - (e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.